

DECISION MEMORANDUM

TO: COMMISSIONER KEMPTON
COMMISSIONER SMITH
COMMISSIONER REDFORD
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL

FROM: NEIL PRICE
DEPUTY ATTORNEY GENERAL

DATE: MAY 24, 2010

SUBJECT: AMENDED APPLICATION OF TRACFONE WIRELESS, INC. FOR
DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN
THE STATE OF IDAHO, CASE NO. TFW-T-09-01

On October 29, 2009, TracFone Wireless, Inc. (“TracFone” or “Company”) filed an Application, pursuant to Section 214(e)(2) of the Communications Act of 1934, for designation as an eligible telecommunications carrier (“ETC”). *Application* at 1. TracFone is seeking ETC designation solely for the purpose of providing Lifeline service under its trade name SafeLink Wireless and will not seek funds from the federal Universal Service Fund. *Id.*

On January 15, 2010, Commission Staff submitted a decision memorandum recommending that the Commission deny TracFone’s Application. On February 5, 2010, the Commission issued an Order denying TracFone’s Application. *See* Order No. 30996.

On March 1, 2010, TracFone filed a Petition for Reconsideration and an Amended Application for ETC designation. On March 8, 2010, Commission Staff filed an answer to TracFone’s Petition. Subsequently, TracFone submitted a letter withdrawing its Petition for Reconsideration and expressing its support for a process that would facilitate a Staff review and recommendation regarding its Amended Application within 60 days.

On April 26, 2010, Staff and TracFone filed a Joint Stipulation Regarding First Production Requests of the Commission Staff.

On May 14, 2010, CTC Telecom, Inc. dba Snake River PCS (“CTC”) and Idaho Telecom Alliance (“ITA”) each filed, pursuant to Commission Rule of Procedure 71, IDAPA 31.01.01.071, a Motion to Intervene Out of Time and Petition to Intervene.

On May 19, 2010, TracFone filed, pursuant to Commission Rule of Procedure 75, IDAPA 31.01.01.075, a Motion in Opposition of TracFone Wireless, Inc. to Petitions to Intervene of CTC Telecom, Inc. dba Snake River PCS and Idaho Telecom Alliance.

MOTION TO INTERVENE OUT OF TIME AND PETITION TO INTERVENE

CTC is a wireless eligible telecommunications carrier (ETC) in Idaho and claims a direct and substantial interest in this proceeding in that it does not believe that designation of TracFone as an ETC is in the public interest. *CTC Petition* at 2.

ITA is a state telephone association, and its members include both commercial companies and cooperatives. *ITA Petition* at 2. ITA's 14 members provide basic and advancing telecommunications services in rural Idaho. All of ITA's members are rural telephone companies as defined in 47 U.S.C. § 153(37), and all the members (or affiliates of the members) are designated eligible telecommunications carriers ("ETC") in Idaho and claim a direct and substantial interest in this proceeding in that it does not believe that designation of TracFone as an ETC is in the public interest. *Id.*

The substance and content in the separate Petitions filed by CTC and ITA are nearly identical. If intervention is granted, the parties' state they will "introduce evidence, cross-examine witnesses, call and examine witnesses and be heard in argument" and claim the "nature and quality of the evidence" they will produce is "dependent upon the nature and effect of other evidence in this proceeding." *Id.*

The parties claim that granting their Petitions to Intervene would provide them with adequate "means of participating in this proceeding which may have a material impact on the Commission's public interest criteria for designation of ETCs in Idaho's rural, high-cost areas." *Id.* at 2-3. Furthermore, granting their petitions "will not unduly broaden the issues nor will it prejudice any part to this case; rather, granting the petition will serve the public's interest." *Id.* at 3.

Finally, the parties request an extension of the May 24, 2010, comment deadline by "at least forty-five (45) days following the date the Commission grants its petition to intervene." *Id.* Such an extension is necessary in order to provide the parties an "opportunity to review the record and supporting documentation, if any, and to propound appropriate discovery, if necessary." *Id.* The parties have not objected to the use of Modified Procedure, or otherwise requested a hearing on this matter.

TRACFONE'S OPPOSITION TO PETITIONERS' MOTIONS TO INTERVENE

TracFone opposes the Petitions to Intervene. *TracFone Motion* at 1. TracFone argues that the Petitions state no legal basis for allowing CTC and ITA to participate as intervenors in this case. *Id.*

TracFone's objections to the Petitions center on the Commission's decision to process their Amended Application pursuant to Modified Procedure. *See* Order No. 31028. TracFone points out that CTC, ITA or any other interested party have been allowed to participate in this proceeding by filing comments regarding TracFone's Amended Application within the comment deadline, on or before May 24, 2010. *TracFone Motion* at 2-3. Further, TracFone asserts that CTC and ITA have failed to "articulate a single reason as to why designation of TracFone as an ETC is not in the public interest." *Id.* at 3. TracFone also believes that the Petitions to Intervene by CTC and ITA offer "no basis" for determining whether their participation as intervenors will unduly broaden the issues in this case. *Id.* at 4.

Finally, TracFone states that it would be prejudiced by a 45-day extension to the comment period. *Id.* at 5. According to TracFone, "further delay in this proceeding will deprive Idaho's low-income consumers from having meaningful competitive choice in Lifeline services." *Id.*

STAFF RECOMMENDATION

Staff believes that both CTC and ITA, in their capacity as ETC's currently operating in Idaho, could provide useful input regarding the issues presented in this case.


Thus, Staff recommends the Commission grant CTC and ITA's Petitions to Intervene and extend the comment period 45 days from its current May 24, 2010 deadline.

COMMISSION DECISION

Does the Commission wish to grant CTC's Petition to Intervene?

Does the Commission wish to grant ITA's Petition to Intervene?

Does the Commission wish to extend the previously established comment deadline by a period of 45 days in order to CTC and ITA additional time to prepare written comments regarding TracFone's Amended Application?



Neil Price
Deputy Attorney General

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